



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Blvd.
 Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 13, 2024
 Sent via email.

Mina Morgan, Associate Planner
 City of Victorville
 14343 Civic Drive
 Victorville, CA 92393
Mmorgan@victorvilleca.gov

Dear Mina Morgan:

PLAN 22-00011 Tentative Tract Map No. 20484 (Project)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2024080629

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration from the City of Victorville for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: McRae Group of Companies, United Engineering Group

Objective: The Project proposes a tentative tract map to subdivide approximately 43.0 acres into 131 lots for single family residential development. The proposed minimum lot sizes are 7,201 square feet and the average lot size would be 7,886 square feet. The project also includes 10 lots for storm drainage and recreational facilities. Storm drainage improvements include dual purpose retention and detention basins. The Project also includes street improvements to Hook Boulevard and Seneca and Cobalt Road, these improvements include pavement, gutter, curb, sidewalk, bike lane and landscaping along these roadways.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Mina Morgan, Associate Planner
City of Victorville
September 13, 2024
Page 2

Location: The Project site is bordered on the north by Hook Boulevard and an adjacent single-family residential tract, to the west by Cobalt Road and vacant undeveloped land, to the south by Seneca Road and very low-density residential development, and to the east by vacant and undeveloped land.

Timeframe: The Project is expected to occur over a 2.5-year period.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City of Victorville in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT #1: Western Joshua tree (*Yucca brevifolia*)

IS/MND page 31 and Protected Plant Preservation Plan page 1

Issue: The Project will impact western Joshua tree (WJT), a candidate species pursuant to the California Endangered Species Act. The IS/MND states that 60 WJT will be significantly impacted through the removal of individuals and roots; clearing vegetation; general operation of vehicles and heavy equipment; grading; staging equipment, and stockpiling. Whilst the Protected Plant Preservation Plan states that there are 2 WJT that occur within the boundaries of the property.

Specific impact: The IS/MND and the Protected Plant Preservation Plan reveals an inconsistent number of WJT individuals that occur within the Project boundaries. As stated in the IS/MND, the Project proponent would need to obtain the appropriate Incidental Take Permit (ITP) from CDFW under CESA or the Western Joshua Tree Conservation Act (WJTCA) for any living or dead western Joshua trees present within the Project site prior to ground-disturbing activities (CDFW 2024). Within the 43.0-acre Project site, the Project would significantly impact individuals of WJT on the Project site and might impact live WJT in adjacent parcels. If the Project proponent applies for an Incidental Take Permit (ITP) through the WJTCA or CESA, a revised WJT census may be needed.

Why impact would occur: Incidental take of WJT individuals in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing an/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

Evidence impact would be significant: The Project as described will result in direct take of WJT and parts thereof and would result in the loss of habitats on which they depend on. WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Additionally, western Joshua tree is protected under the WJTCA. The WJTCA was enacted in July 2023 and prohibits the import, export, take, possession, purchase, or sale of any western Joshua tree in California unless authorized by CDFW (CDFW 2024). Grading, vegetation clearing, staging of construction equipment, vehicles, and foot traffic may result in direct or indirect loss of WJT on the Project site and may result in the disruption to WJT seedbank.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to western Joshua trees. CDFW offers the following revisions to MM BIO-1 (edits are in strikethrough and **bold**) for inclusion in the final MND.

MM BIO-1 Western Joshua Tree (REVISED)

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 3

Comply with the Western Joshua Tree Conservation Act (WJTCA) **or the California Endangered Species Act (CESA)**. Prior to the initiation of **ground disturbing activities that may result in incidental take of western Joshua tree by the** removal, relocation, replanting, trimming or pruning, or other activity that may result in take of WJT on site, the Project Proponent shall obtain a CESA Incidental Take Permit (ITP) under Section 2081 of the CESA, or any other appropriate take authorization under CESA or the WJTCA (Fish and Game Code §§ 1927-1927.12). **Mitigation for CESA will occur at a mitigation ratio determined by CDFW. The WJTCA requires payment of prescribed fees based upon a WJT census approved by CDFW.** The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit, which may consist of mitigation obligations, relocation, off-site conservation, a CDFW-approved mitigation bank or a combination thereof.

COMMENT #2: Inadequacy of Presence/Absence surveys for Special Status Plants

IS/MND 4.4 Biological Resources

Issue: The IS/MND analysis and conclusions rely on an outdated biological survey. The biological assessment conducted may no longer represent the current state of the Project. The General Biological Resources Assessment, RCA Associates, Inc. states that field work was completed on January 11, 2022. The Biological Resources Assessment does not state whether more than one field visit for plant surveys were conducted. CDFW's Protocols for Surveys and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities² states that additional surveys are usually necessary to accurately document the floristic species diversity within a Project area. Additionally, the surveys were conducted outside of the recommended flowering or fruiting times for multiple species.

Specific impact: The IS/MND bases its analysis of impacts to biological resources on the initial field study described in the Biological Resources Assessment that was conducted on January 11, 2022. The Biological Resources Assessment did not conduct focused surveys staggered throughout early, mid and late season that could have determined the presence of special status plant species within appropriate bloom periods. Therefore, Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of sensitive plant communities. The IS/MND does not propose a mitigation measure for pre-construction floristic surveys for special status species that have the potential to occur within the Project area. The Biological Resources Assessment analysis that the IS/MND relies upon may not be adequate to reduce the Project's impacts to level that would be less than significant.

Why impact would occur: The Biological Resource Assessment Table 4-1 states that "the site does support suitable habitat" for the following special status species: White pygmy poppy (*Canbya candida*), Mojave monkeyflower (*Diplacus mohavensis*), Booth's evening-primrose (*Eremothera boothii* ssp. *boothii*) and Beaver Dam beadroot (*Pediomelum castoreum*) although no individuals were observed during the field surveys conducted on January 11, 2022. The Biological Resource Assessment surveyed for the mentioned species outside of their frequent bloom period and it is unclear whether those species could be present within the Project area if they were surveyed at their appropriate bloom period and staggered throughout varying life stages. Additionally, site conditions may have changed since January 11, 2022, and the potential for those species to occur throughout the site may have changed. This non-protocol level survey was conducted outside of the identification and flowering periods for many of the special-status plants with the potential to occur within the Project area. If the absence of the species is not established, it may be reasonably assumed that the species are present, and specific enforceable avoidance, minimization, and mitigation measures should be developed.

² California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. https://www.cnps.org/wp-content/uploads/2019/10/Bot-Cert_2018-CDFW-Plant-and-Vegetation-Survey-Protocols-LR.pdf

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 4

Evidence impact would be significant: Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Without an accurate environmental baseline of present candidate, sensitive, or special status species it is unclear if the Project Proponent will avoid, minimize, or mitigate the impacts to a level below significant adverse effect.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the IS/MND. The IS/MND should include a Project impact analysis on sensitive plant species based on professionally accepted survey methodologies, including but not limited to: White pygmy poppy (*Canbya candida*), Mojave monkeyflower (*Diplacus mohavensis*), Booth's evening-primrose (*Eremothera boothii* ssp. *boothii*), Beaver Dam beadroot (*Pediomelum castoreum*), San Bernardino aster (*Symphyotrichum defoliatum*), and Southern mountain skullcap (*Scutellaria bolanderi* ssp. *austromontana*). Additionally, the IS/MND should include the presence/absence results from focused surveys staggered throughout early, mid and late season at appropriate bloom periods for the special status plant species previously mentioned. With such information, the City of Victorville can identify and analyze the potential impacts to candidate, sensitive, or special status species in or adjacent to the Project area and develop mitigation measures that can avoid, minimize, or mitigate impacts to the species to lessen the adverse significant effects. CDFW recommends the inclusion of the mitigation measure below:

MM-BIO-7 Special Status Plants Mitigation Measure (NEW)

Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project shall either avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging), or. If complete avoidance is not feasible, the Project shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to impact) ratio mitigation ratio determined by CDFW after Project analysis. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

COMMENT #3: Desert Tortoise (*Gopherus agassazii*)

IS/MND 4.4 Biological Resources, Page 31-32, 34

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. The Project may result in the take of desert tortoise, a California Endangered Species Act (CESA) listed threatened and

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 5

candidate endangered species, during construction of the Project and life of the Project.

Specific impact: The Project includes altering 43 acres into 131 lots for single family residential development. Project activities are mentioned to include site preparation, grading, building construction, paving, etc., Through the activities mentioned, direct take of desert tortoise is possible and indirect take with reducing habitat and species movement.

Why impact would occur: The IS/MND mentions surveys and focused surveys for desert tortoise were conducted. However, the only date associated for surveys was January 11, 2022, and the temperature was mentioned to be between 40–50-degrees Fahrenheit. It is also mentioned that the surveys were conducted as per United States Fish and Wildlife Service (USFWS) protocols. Desert tortoise active season is known to occur in spring (April-May) and Fall (September-October), furthermore the USFWS Desert Tortoise Field Manual indicates surveys should be conducted during the desert tortoise active period³. Therefore, the general and focused survey was conducted outside of the active season and in weather conditions not typical for desert tortoise activity (e.g, temperature). Furthermore, the IS/MND indicates the site does not contain suitable habitat for desert tortoise. The General Biological Resources Assessment conducted for the Project indicates both creosote bush and white bursage were observed on site and in surrounding areas, contradicting information in the IS/MND. Lastly, in following USFWS protocols, survey results are valid for up to a year as desert tortoise could have moved in since the surveys have occurred, the surveys were conducted over two years ago.

Evidence impact would be significant: Desert tortoise was recently relisted from threatened to endangered species under CESA, signifying the continued need to conserve the species and importances to avoid impacts to the species and its habitat. Although surveys and IS/MND indicate desert tortoise or sign of desert tortoise was not found, the species could have moved into the area since the surveys occurred. Furthermore, CDFW's California Natural Diversity Database (CNDDDB) Biogeographic information and observation system (BIOS)⁴ indicates desert tortoise observation within 2 miles of the Project site in adjacent habitat. CDFW considers the take of a listed species and loss of species habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends revisions to MM BIO-4 (edits are in strikethrough and additions are in bold) and the adoption of BIO 8 in the final MND.

MM BIO-4. Pre-Construction Desert Tortoise Surveys (REVISED)

~~No more than 30 calendar days~~ Prior to start of Project Activities a qualified biologist shall conduct pre-construction presence/absence a **preconstruction** survey for desert tortoise. ~~Pre-construction surveys shall be completed using the U.S. Fish and Wildlife Service's 2009 desert tortoise survey methodology (see: <https://www.fws.gov/sites/default/files/documents/Desert-Tortoise-FieldManual.pdf>), perpendicular survey routes within the Project site and 50-foot buffer zone.~~ Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. **Results of the surveys shall be submitted to CDFW prior to the start of Project activities. If desert tortoise absence is confirmed, the CDFW-approved biologist shall ensure desert tortoise does not enter the Project area.** Should desert tortoise presence be confirmed during the survey **or desert tortoise is observed at any time, the Project proponent shall submit to CDFW for review and approval a desert**

³ United States Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*)

⁴ California Department of Fish and Wildlife. California Natural Diversity Database (CNDDDB) Accessed: <https://wildlife.ca.gov/Data/CNDDDB>

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 6

tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of the take to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained. ~~all desert tortoises encountered during clearance surveys and subsequent monitoring efforts will be permanently removed from the Project site and translocated to an offsite recipient site. The Project Proponent shall prepare a site-specific Desert Tortoise Translocation Plan that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury and will be consistent with project permits and current USFWS guidelines. The Plan will also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site. Prior to construction, the Plan will be subject to the approval of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within suitable and occupied desert tortoise habitat and/or monetary contributions to other recovery efforts in the West Mojave habitat mitigated for at a ratio of 1:1. Final mitigation acreage are subject to the approval of the State and federal wildlife agencies~~

MM BIO-8 Desert Tortoise Compensatory Mitigation (NEW)

Permanent impacts to desert tortoise habitats shall be mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area. Temporary impacts to desert tortoise habitats shall be restored on site at a minimum of 1:1 (mitigated to impacted) ratio by acreage area. If areas temporarily impacted will not return to their baseline ecological state and form within one-calendar-year of occurring impacts, additional compensatory mitigation to address temporal losses of habitat shall occur. Compensatory mitigation for desert tortoise habitat impacts by total area (i.e., the combined total acreage of permanent and temporary impacts calculated post-ratios) shall be conducted either on site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, conservation, and management, or a combination of both, in coordination with CDFW.

COMMENT #4: Species Connectivity

Issue: The IS/MND does not provide any analysis or avoidance/minimization, or mitigation measures specific to Project impacts on the movement of species between the surrounding adjacent undeveloped areas. The IS/MND relies on the outdated Biological Resources Assessment that was conducted on January 11, 2022. The surveys referenced within the IS/MND were conducted outside of the recommended timeframes⁵ for multiple species and CDFW cannot accurately determine the presence/absence of special status species within the Project area from these surveys. If the absence of the species is not established, it may be reasonably assumed that the species are present, and specific enforceable avoidance, minimization, and mitigation measures should be developed.

Specific impact: The Project may result in a semi-permeable to impermeable barrier to wildlife connectivity that could result in the restriction of movement for species.

Why impact would occur: The project has the potential to isolate populations and restrict movement of genes between the adjacent surrounding undeveloped portions of land. Without establishing an appropriate biological baseline utilizing professionally accepted survey standards, the IS/MND cannot disclose the potential Project impacts on species, nor can it develop specific and enforceable avoidance, minimization, or mitigation measures.

⁵ United States Fish and Wildlife Service. 2019. Clearance Survey Protocol for the Mojave Desert Tortoise

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 7

Evidence impact would be significant: The Project may result in habitat fragmentation due to the narrowing of wildlife corridors and routes⁶ between the two surrounding undeveloped areas. The Project could restrict gene flow between populations that may result in a lower genetic diversity that may decrease species fitness⁷⁸. Additionally, the Project may result in collision-related species mortality due to an increase in traffic patterns and roads⁹. Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance.

Recommended Potentially Feasible Mitigation Measure to reduce to less than significant: CDFW recommends the adoption of MM-BIO-9 (NEW) below in the final MND to ensure impacts related to species connectivity within the adjacent surrounding undeveloped areas are mitigated to a level of less than significant.

MM-BIO-9 Wildlife Corridor Mitigation Measure (NEW)

Prior to Project construction activities, a complete and recent inventory of plant and wildlife species located within the Project footprint with the potential to be affected including but not limited to rare, threatened, endangered, and other sensitive species, Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380) for which suitable habitat is present within or adjacent to the Project. No more than 30 calendar days prior to start of Project activities a qualified biologist shall conduct pre-constriction surveys for the inventoried species that have potential to be affected from Project related activities. The qualified Biologist shall be on site daily to conduct clearance surveys for any special status species that have the potential to occur. Concurrently during Project activities the qualified Biologist shall report any collision related mortalities that may occur within adjacent roadways of the Project area to the [California Roadkill Observation System \(CROS\)](#). In addition, the qualified Biologist shall report any identifiable recently sprouted native plant species that occur within the Project area during Project activities to the [CalFlora Plant Observation database](#).

COMMENT #5: Nesting Bird Survey Mitigation Measure

IS/MND page 7 and Exhibit C: Mitigation Monitoring Reporting Program

Issue: The MM-BIO-6 Nesting Bird Survey measure in the IS/MND does not coincide with the measures outlined within Exhibit C: Mitigation Monitoring Program for the same MM-BIO-6 Nesting Bird Survey measure. The IS/MND states that “*Regardless of the time of year, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer.*” Additionally, Exhibit C: Mitigation Monitoring Reporting Program states that “*All Project activities on-site shall be conducted outside of nesting season {January 15 to August 31} to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer.*” CDFW would like to note that survey timeframes for nesting birds should be consistent and should avoid impacts to all nesting birds that have the potential to occur within the Project area. Within Exhibit C:

⁶ Crooks, K. R. (2002). Relative Sensitivities of Mammalian Carnivores to Habitat Fragmentation. *Conservation Biology*, 16(2), 488–502. JSTOR, <http://www.jstor.org/stable/3061375>.

⁷ Clark, R. W., Brown, W. S., Stechert, R., & Zamudio, K. R. (2010). Roads, Interrupted Dispersal, and Genetic Diversity in Timber Rattlesnakes. *Conservation Biology*, 24(4), 1059–1069. <http://www.jstor.org/stable/40864206>

⁸ Dutcher, K.E., Vandergast, A.G., Esque, T.C., Mitelberg, A., Matocq, M.D., Heaton, J. S., & Nussear, K. E. (2020). Genes in space: what Mojave desert tortoise genetics can tell us about landscape connectivity. *Conservation Genetics* 21, 289–303. <https://doi.org/10.1007/s10592-020-01251-z>

⁹ Trombulak, S. C., & C. A. Frissell. (2000). Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology*, 14, 18–30.

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 8

Mitigation Monitoring Reporting Program the Responsible Party for MM-BIO-6 Nesting Bird Survey is the Project Developer and Project Archaeologist. CDFW would like to note that the Responsible Party for implementing MM-BIO-6 should be the Project Proponent and the Project Biologist. Additionally, CDFW has concerns that MM-BIO-6 does not adequately detail specific outlines for the buffer zones, which should be determined by the qualified biologist.

Specific impact: MM-BIO-6 of the Exhibit C: Mitigation Monitoring Reporting Program states that surveys for nesting birds will only be conducted during the nesting bird season between January 15 to August 31 although outside of this time nesting birds will not be surveyed for even if they have the potential to occur throughout the Project area. MM-BIO-6 within Exhibit C: Mitigation Monitoring Reporting Program the Responsible Party lists the Project Archeologist as a Responsible Party for implementing the surveys. The nesting bird surveys should be conducted by a qualified biologist experienced in identifying local and migratory bird species, therefore the Responsible Party for implementing the nesting bird surveys would most suitably be the Project Proponent and the Project Biologist.

Why impact would occur: Surveying once within a specified timeframe does not increase the probability that nesting birds would be observed on site. Species may have moved in and out of the Project area outside of the specified time frame and ultimately would have not otherwise been included in the surveys if they were only conducted within the timeframe proposed in MM-BIO-6 Exhibit C: Mitigation Monitoring Reporting Program. Additionally, the Nesting Bird Surveys would be accurate if they were conducted by an experienced biologist rather than the Project Archeologist as referenced in Exhibit C: Mitigation Monitoring Reporting Program.

Evidence impact would be significant: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

Recommended Potentially Feasible Mitigation Measure to reduce to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to MM BIO-6 (edits are in strikethrough and **bold**) for inclusion in the final MND.

MM-BIO-6 Nesting Bird Survey (REVISED)

Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. Regardless of the time of year, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. ~~Nest buffers are species-specific and range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior.~~ **The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators.** Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. **If the qualified biologist determines that the Project activities may be causing an**

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 9

adverse reaction, the qualified Biologist shall adjust the buffer accordingly.

Active nests shall be monitored until the biologist has determined the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

Comment # 6: Burrowing Owl (*Athene cunicularia*)

IS/MND 4.4 Biological Resources, Page 32-34

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. Direct take of burrowing owl may also occur during the course of Project activities and for the life of the Project. **Specific**

impact: The IS/MND describes no burrows found on site, however since the time of surveying, burrowing owl could have potentially inhabited the site. If burrowing owl has inhabited the site the potential for the collapsing of burrows, entombment, displacement, direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, reduction of habitat and habitat quality could occur. The Project as described will cause permanent and temporary impacts to burrowing owl foraging and nesting habitat

Why impact would occur: Burrowing owl could be directly impacted during construction and for the life of the Project through the removal of potential foraging habitat, and loss of habitat features caused by road improvements on Hook Boulevard, Seneca Road and Cobalt Road. Nest destruction, nest abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable habitat could also all lead to significant impacts to burrowing owl individuals and local populations. Habitat conversion may occur indirectly through the introduction of invasive species, which could also negatively affect burrowing owls. The IS/MND mentions the site does not support suitable habitat and lacks burrows for burrowing owls. Burrowing owl or other burrowing mammals could have moved in since the time of surveying and established suitable habitat for burrowing owl. Furthermore, burrowing owl has been known to use other structures such as debris piles, culverts and rock cavities that may be on site¹⁰. Based on records on CNDDDB BIOS, burrowing owl has been seen in adjacent lands indicating potential nesting and foraging habitat occurs within the Project area¹¹.

Evidence impact would be significant: Burrowing owls are regulated under Fish and Game Code section 3503.5, are a CDFW SSC, and have recently been petitioned for consideration to be listed as Endangered or Threatened under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). Furthermore, if burrowing owl becomes a State candidate threatened or endangered species under CESA, or later listed as threatened or endangered under CESA, and complete avoidance of burrowing owl cannot be achieved, CDFW considers the take of burrowing owl and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant which may include that Project activities be postponed until appropriate authorization (*i.e.*, a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

MM BIO-2. Burrowing Owl Pre-Construction Surveys (REVISED)

Pre-construction surveys for Burrowing Owls on the Project site and in the surrounding area shall be conducted by a qualified biologist no more than **14-30** days prior to

¹⁰ California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfq.ca.gov/wildlife/nonqgame/survev_monitor.html

¹¹ California Department of Fish and Wildlife, California Natural Diversity Database (2024, May). Burrowing owl [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved August 20, 2024, from <https://wildlife.ca.gov/Data/BIOS>.

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 10

initiation of Project ground-disturbing activities **and a survey 24 hours prior to Project activities** in accordance with guidelines identified by the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game Code, March 2012). If Project activities are delayed for more than 30-days (including the restarting of activities after project/ground disturbing delays of 30-days or more), additional surveys will be required, ~~including but not limited to a take avoidance survey within 24 hours of ground disturbance.~~ If burrowing owls are observed on the Project site during the Preconstruction surveys, **Project activities shall be immediately halted and** the California Department of Fish and Wildlife shall be immediately notified, ~~and Mitigation Measure BIO-3 shall be required.~~ **The Qualified Biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities and implementing measures of the Burrowing Owl Plan.** If burrowing owl(s) are not observed on site during any pre-construction surveys, a letter shall be prepared by the qualified biologist documenting the results of the surveys. The letter shall be submitted to CDFW prior to issuance of any grading permits **and prior to ground disturbing activities.**, ~~and no further action is required.~~

The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrows cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion (i.e., passive relocation) and closure shall only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and Caltrans shall implement CDFW approved mitigation prior to the initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to burrowing owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated burrowing owls shall also be included in the Burrowing Owl Plan.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Mina Morgan, Associate Planner
City of Victorville
September 13, 2024
Page 11

CDFW appreciates the opportunity to comment on the MND to assist The City of Victorville in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to CDFW staff Emily Leon, Environmental Scientist at (760) 644-5976 or Emily.Leon@wildlife.ca.gov and Steven Recinos, Environmental Scientist at (909) 731-5954 or Steven.Recinos@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

Attachments: (A) Mitigation Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Julia Karo, Senior Environmental Scientist, Supervisor
Inland Deserts Region
Julia.Karo@wildlife.ca.gov

Attachment A: Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into the final IS/MND for the Project.

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 12

Biological Resources (BIO)		
Mitigation Measure (MM)	Timing	Responsible Party
<p>MM BIO-1 Western Joshua Tree (REVISED)</p> <p>Comply with the Western Joshua Tree Conservation Act (WJTCA) or the California Endangered Species Act (CESA). Prior to the initiation of ground disturbing activities that may result in incidental take of western Joshua tree by the removal, relocation, replanting, trimming or pruning, or other activity that may result in take of WJT on site, the Project Proponent shall obtain a CESA Incidental Take Permit (ITP) under Section 2081 of the CESA, or any other appropriate take authorization under CESA or the WJTCA (Fish and Game Code §§ 1927-1927.12). Mitigation for CESA will occur at a mitigation ratio determined by CDFW. The WJTCA requires payment of prescribed fees based upon a WJT census approved by CDFW. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit, which may consist of mitigation obligations, relocation, off-site conservation, a CDFW-approved mitigation bank or a combination thereof.</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project Proponent</p>

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 13

<p>MM-BIO-7 Special Status Plants Mitigation Measure (NEW)</p> <p>Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife’s (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project shall either avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging), or. If complete avoidance is not feasible, the Project shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to impact) ratio mitigation ratio determined by CDFW after Project analysis. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project Proponent</p>
--	---	---------------------------------

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 14

MM BIO-4. Pre-Construction Desert Tortoise Surveys (REVISED)	Prior to and During Project Activities	Project Proponent/ Project Biologist
<p>No more than 30 calendar days Prior to start of Project Activities a qualified biologist shall conduct pre-construction presence/absence a preconstruction survey for desert tortoise. Pre-construction surveys shall be completed using the U.S. Fish and Wildlife Service’s 2009 desert tortoise survey methodology (see: https://www.fws.gov/sites/default/files/documents/Desert-Tortoise-FieldManual.pdf), perpendicular survey routes within the Project site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the surveys shall be submitted to CDFW prior to the start of Project activities. If desert tortoise absence is confirmed, the CDFW-approved biologist shall ensure desert tortoise does not enter the Project area. Should desert tortoise presence be confirmed during the survey or desert tortoise is observed at any time, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of the take to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained. all desert tortoises encountered during clearance surveys and subsequent monitoring efforts will be permanently removed from the Project site and translocated to an offsite recipient site. The Project Proponent shall prepare a site-specific Desert Tortoise Translocation Plan that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury and will be consistent with project permits and current</p>		

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 15

<p>USFWS guidelines. The Plan will also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site. Prior to construction, the Plan will be subject to the approval of the GDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within suitable and occupied desert tortoise habitat and/or monetary contributions to other recovery efforts in the West Mojave habitat mitigated for at a ratio of 1:1. Final mitigation acreage are subject to the approval of the State and federal wildlife agencies</p>		
<p>MM BIO-8 Desert Tortoise Compensatory Mitigation (NEW)</p> <p>Permanent impacts to desert tortoise habitats shall be mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area. Temporary impacts to desert tortoise habitats shall be restored on site at a minimum of 1:1 (mitigated to impacted) ratio by acreage area. If areas temporarily impacted will not return to their baseline ecological state and form within one-calendar-year of occurring impacts, additional compensatory mitigation to address temporal losses of habitat shall occur. Compensatory mitigation for desert tortoise habitat impacts by total area (i.e., the combined total acreage of permanent and temporary impacts calculated post-ratios) shall be conducted either on site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, conservation, and management, or a combination of both, in coordination with CDFW.</p>	<p>During or Post Project Activities</p>	<p>Project Proponent</p>

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 16

MM-BIO-9 Wildlife Corridor Mitigation Measure (NEW)	Prior to and During Project Activities	Project Proponent
<p>Prior to Project construction activities, a complete and recent inventory of plant and wildlife species located within the Project footprint with the potential to be affected including but not limited to rare, threatened, endangered, and other sensitive species, Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380) for which suitable habitat is present within or adjacent to the Project. No more than 30 calendar days prior to start of Project activities a qualified biologist shall conduct pre-constriction surveys for the inventoried species that have potential to be affected from Project related activities. The qualified Biologist shall be on site daily to conduct clearance surveys for any special status species that have the potential to occur. Concurrently during Project activities the qualified Biologist shall report any collision related mortalities that may occur within adjacent roadways of the Project area to the California Roadkill Observation System (CROS). In addition, the qualified Biologist shall report any identifiable recently sprouted native plant species that occur within the Project area during Project activities to the CalFlora Plant Observation database.</p>		

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 17

MM-BIO-6 Nesting Bird Survey (REVISED)	Prior to and During Project Activities	Project Proponent/ Project Biologist
<p>Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. Regardless of the time of year, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. If the qualified biologist determines that the Project activities may be causing an adverse reaction, the qualified Biologist shall adjust the buffer accordingly. Active nests shall be monitored until the biologist has determined the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		

Mina Morgan, Associate Planner
 City of Victorville
 September 13, 2024
 Page 18

MM BIO-2. Burrowing Owl Pre-Construction Surveys (REVISED)	Prior to and During Project Activities	Project Proponent/ Project Biologist
<p>Pre-construction surveys for Burrowing Owls on the Project site and in the surrounding area shall be conducted by a qualified biologist no more than 14-30 days prior to initiation of Project ground-disturbing activities and a survey 24 hours prior to Project activities in accordance with guidelines identified by the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game Code, March 2012). If Project activities are delayed for more than 30-days (including the restarting of activities after project/ground disturbing delays of 30-days or more), additional surveys will be required, including but not limited to a take avoidance survey within 24 hours of ground disturbance. If burrowing owls are observed on the Project site during the Preconstruction surveys, Project activities shall be immediately halted and the California Department of Fish and Wildlife shall be immediately notified, and Mitigation Measure BIO-3 shall be required. The Qualified Biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities and implementing measures of the Burrowing Owl Plan. If burrowing owl(s) are not observed on site during any pre-construction surveys, a letter shall be prepared by the qualified biologist documenting the results of the surveys. The letter shall be submitted to CDFW prior to issuance of any grading permits and prior to ground disturbing activities., and no further action is required.</p> <p>The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrows cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion (i.e., passive relocation) and closure shall only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and Caltrans shall implement CDFW approved mitigation prior to the initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to burrowing owls. If no suitable habitat is available nearby, details regarding the creation and</p>		

Mina Morgan, Associate Planner
City of Victorville
September 13, 2024
Page 19

funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated burrowing owls shall also be included in the Burrowing Owl Plan.		
--	--	--